

¹ 5 U.S.C. § 8101 *et seq.*

his delivery route while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on November 6, 2014 and returned to work on December 2, 2014.

In a letter dated March 23, 2015, the employing establishment challenged appellant's claim. It noted that he failed to advise management of an injury occurring on November 6, 2014 and notified management four months later without providing medical documentation supporting his claim. The employing establishment also indicated that appellant did not submit any medical documentation supporting an injury. It related that there were no witnesses to the incident and, since the alleged incident, appellant had worked several hours of overtime and had worked extra days.

By development letter dated March 27, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received additional medical evidence. In a work excuse note dated November 6, 2014, Dr. Anthony T. Arcati, Board-certified in family practice, indicated that appellant should remain off of work until November 11, 2014.

In a report dated November 12, 2014, Dr. Cono Gallo, Board-certified in diagnostic radiology, performed a magnetic resonance imaging (MRI) scan. His impression was that appellant suffered from minimal right foraminal disc protrusions at L4-L5 and L5-S1 along with facet arthrosis resulting in mild-to-moderate foraminal stenosis.

In a work excuse note dated November 17, 2014, Laura Maroldo, a certified physician assistant, related that appellant should remain off of work until November 24, 2014.

In reports dated November 26, 2014 and February 25, 2015, Dr. Edward S. Rubin, an interventional pain management specialist, diagnosed lumbar spondylosis with myelopathy and lumbosacral radiculitis.

In a report dated December 5, 2014, Dr. Rubin indicated that he had performed a right L4-L5 and L5-S1 facet joint injection. He diagnosed facet arthropathy.

In a work excuse note dated December 5, 2014, Dr. Rubin indicated that appellant should remain off of work from December 5 to 8, 2014, and could return to full-duty work on December 9, 2014.

In a letter dated March 31, 2015, Dr. Arcati noted that he examined appellant on November 6, 2014, and, at that time, he diagnosed lumbosacral strain and mild osteoarthritis.

In an April 2, 2015 response to the March 27, 2015 development letter, appellant related a factual recitation of the employment incident on November 6, 2014. He indicated that, while delivering his route, he felt a pain in his back, which worsened throughout the day. Appellant left work on November 6, 2014 and saw Dr. Arcati. He noted that he did not return to duty until December 9, 2014.

By decision dated April 30, 2015, OWCP accepted that the November 6, 2014 employment incident occurred, as alleged. However, it denied appellant's claim because the medical evidence did not demonstrate that the claimed medical condition was causally related to the accepted employment incident. OWCP noted that appellant's physician did not provide a medical rationale based on a complete and accurate history and supported by objective findings as to how his employment incident on November 6, 2014 caused, aggravated, or contributed to his medical conditions.

On May 18, 2015 appellant requested an oral hearing before an OWCP hearing representative and submitted additional medical evidence. The oral hearing was held on July 21, 2015. Appellant testified that he was delivering mail and climbed up on one step with his right foot, turned and placed the mail in the receptacle, stepped down onto his right foot, and felt a sharp pain in his back. He further testified that he was carrying a 20- to 25-pound mailbag on his left shoulder when the incident occurred.

In a report dated August 24, 2015, Dr. Andrew Tarleton, an orthopedic surgeon, examined appellant and diagnosed bulging disc, lumbar degenerative disc disease, and osteoarthritis of the lumbar spine.

By decision dated September 8, 2015, an OWCP hearing representative affirmed the April 30, 2015 decision. She found that appellant had not submitted medical evidence, which established causation between the medical diagnoses and the accepted November 6, 2014 employment incident.

In reports dated February 8, April 11 and 25, and May 11, 2016, Dr. Tarleton reexamined appellant and diagnosed lumbago, lumbar radiculopathy, lumbar disc herniation, osteoarthritis of the lumbar spine, and lumbar degenerative disc disease. In the February 8, 2016 report, he indicated that appellant could return to work with limitations on February 9, 2016. In the May 11, 2016 report, Dr. Tarleton restricted appellant from lifting more than 20 pounds.

On September 12, 2016 appellant, through counsel, requested reconsideration of OWCP's hearing representative's September 8, 2015 decision.

On June 12, 2018 OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³ One such limitation provides that a request for reconsideration must be received within one year of the date of OWCP's decision for which review

² C.Y., Docket No. 18-0693 (issued December 7, 2018); see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

is sought.⁴ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the integrated Federal Employees’ Compensation System (iFECS).⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under 5 U.S.C. § 8128(a).⁶

Section 10.607(b) provides that OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. The reconsideration request must demonstrate that OWCP’s decision was, on its face, erroneous.⁷

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁸ The evidence must be positive, precise, and explicit and must be manifest on its face that OWCP committed an error.⁹ Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to demonstrate clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹²

To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP’s decision.¹³ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP, such that OWCP abused its discretion in denying merit review in the face of such evidence.¹⁴

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁶ *F.R.*, Docket No. 09-575 (issued January 4, 2010); see *Jesus D. Sanchez*, *supra* note 2.

⁷ 20 C.F.R. § 10.607(b).

⁸ *C.Y.*, *supra* note 2; See *Nancy Marcano*, 50 ECAB 110, 114 (1998); *Dean D. Beets*, 43 ECAB 1153, 157-58 (1992).

⁹ *M.L.*, Docket No. 09-956 (issued April 15, 2010); see *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹⁰ *C.Y.*, *supra* note 2; see *Richard L. Rhodes*, 50 ECAB 259, 264 (1999).

¹¹ *C.Y.*, *id.*; see *Leona N. Travis*, 43 ECAB 227, 241 (1991).

¹² See *Jimmy L. Day*, 48 ECAB 652 (1997); *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹³ See *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁴ See *Pete F. Dorso*, 52 ECAB 424 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations and procedures establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP decision.¹⁵ For OWCP decisions issued on or after August 29, 2011, timeliness is determined by "received date" as recorded in iFECS.¹⁶ The most recent merit decision was the September 8, 2015 hearing decision, which affirmed the April 30, 2015 denial of appellant's traumatic injury claim. Appellant had one year from the date of the September 8, 2015 decision to make a timely request for reconsideration. Because appellant's request was not received by OWCP until Monday, September 12, 2016, more than one-year after the September 8, 2015 merit decision, it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in the denial of his claim.¹⁷

In support of his untimely request for reconsideration, appellant submitted reports dated February 8, April 11 and 25, and May 11, 2016 from Dr. Tarleton. However, these reports did not contain the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its September 8, 2016 decision.¹⁸ The evidence and argument submitted did not shift the weight of the evidence and raise a substantial question concerning the correctness of OWCP's prior decision. The Board has previously explained that even evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, does not demonstrate clear evidence of error.¹⁹

As such, the Board finds that appellant failed to demonstrate clear evidence of error.²⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.

¹⁵ 20 C.F.R. § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

¹⁶ *Supra* note 5

¹⁷ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁸ *See supra* note 9.

¹⁹ *L.W.*, Docket No. 18-1475 (issued February 7, 2019).

²⁰ *W.A.*, Docket No. 18-0297 (issued July 18, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board